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## CURRENT TOPICS

### Justices Retiring with Clerk

IN *R.* v. *Barry* (*Glamorgan*) *Justices* (*The Times*, 7th October) a conviction was quashed because magistrates requested their clerk to retire with them to consider their verdict in a case in which no point of law was involved. The annual report of the Magistrates' Association (to which we refer more generally below) puts forward the view of the council of the association on the principle laid down in *R.* v. *East Kerrier Justices* [1952] 2 Q.B. 719 that a clerk should only be sent for by justices when his advice is required on a point of law and should not automatically retire with them. The council affirms the statement at para. 66 of the Roche Committee's Report on Justices' Clerks, that it was entirely proper and natural that justices might wish their clerk to retire with them, but it was only on their request at their discretion that he should accompany them. The report states: "He has his notes of the evidence if it is desired to refer to them, he knows the various penalties and modes of treatment for the particular matter in hand and, though he should not, unless consulted, advise as to the course to be adopted, it is both admissible and proper for his bench to ask and be told out of his experience what are usual or proper measures to be adopted according to the practice of that bench or other benches. Such an amount of guidance tends to reasonable uniformity in sentences and to the due administration of justice. We think the true conclusion is this: that if the relationship of bench and clerk has been properly regulated in court, there will be no good grounds for criticising the clerk's retirement with the justices. But if the clerk has been permitted to act as if he were the court itself, then it is small wonder if his retirement is resented. There are few things more detrimental to justice than this, for the reason that it is universally and naturally regarded as an injustice by the parties concerned if their cases are determined by a person who has no right or duty to determine them." Mr. G. GODFREY PHILLIPS, in *The Times* of 9th October, wrote: "In a large number [of cases] the accused is not represented at all. It may not be until discussion takes place in the retiring room that it is realised—frequently because of an appropriate reminder by the clerk—that there is a point of law involved."

### New University Law Building

THE new building of the Faculty of Law at the University of Southampton was opened by Sir RAYMOND EVERSHED, Master of the Rolls, on 6th October. He expressed the hope that the study of the law in this country would always be a civilising and a humanising influence, and that those who practised the law would always regard themselves as members of a learned profession which possessed standards of the highest integrity, including that of scholarship. Mr. S. N. GRANT-BAILEY, Dean of the Faculty, said he believed that the responsibility and the opportunity of the lawyer in the community had never been greater. An unresolved difficulty of legal education was how to equip the law student in the work of advocacy and for adjudication on the bench. A defect of

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the law school system was that at best it turned out scholars who were unskilled in practical application of principles to facts and in advocacy. The Regulations and Syllabus for 1953–54 show that in the three years' law course the subjects are well chosen, and in the third year four practical special subjects are to be selected from a list of eleven. Preventive law, professional ethics, advocacy and the theory of evidence and procedure are compulsory. The Law Faculty is an appointed Provincial Law School of The Law Society. It provides specialised courses of lectures accompanied by private tuition, discussion classes and practice tests for the law subjects of the Intermediate Examination of The Law Society. There will also be provided in the Autumn Term, 1953, a course of lectures accompanied by discussion classes and practice tests for the trust accounts and book-keeping portion of The Law Society's Intermediate Examination. Courses of lectures accompanied by discussion class, private tuition and practice tests for the Final Examination of The Law Society will commence in the same term.

### Not Ready for Trial

MR. JUSTICE WYNN PARRY, in the Chancery Division on 6th October, ordered solicitors personally to pay the costs thrown away by reason of an adjournment occasioned by the fact that they were not ready for trial. His lordship said that application should have been made earlier, so that another case could have been put in the list. He would take the only course open to him and express his extreme displeasure by ordering whatever costs were thrown away by reason of the adjournment to be paid personally by the two firms of solicitors involved.

### The Magistrates' Association: Report

THE thirty-third annual report of the Magistrates' Association shows a steady increase in membership which now stands at 9,450, and is over half the number of active magistrates in England and Wales. Not only members but all magistrates in many parts of the country have had the opportunity of attending meetings arranged by the association in their area. Magistrates, justices' clerks, prison governors, doctors and others have addressed these meetings on such subjects as the sentence of the court, probation, juvenile courts, matrimonial jurisdiction, road traffic offences, Borstal training, the psychology of the criminal, etc. Three residential week-end conferences have been held at Ashridge, Nottingham and Weston-super-Mare. The council has given consideration to certain proposals put forward by Mr. J. P. EDDY, Q.C., and is of the opinion that greater discretion should be given to magistrates as regards disqualification from driving, and has put forward certain detailed recommendations for the amendment of the law, on the understanding that they should apply to summary trial only, and on the assumption that suitable arrangements are made for proving previous convictions. At the present time there is no power to disqualify for exceeding the speed limit on a first or second conviction. The council recommends that the court shall have power to disqualify, at its discretion, for not more than three months for a second conviction, for not more than twelve months on a third conviction, and that the court must disqualify on further convictions. For careless driving it is not now possible to disqualify for more than one month on a first conviction, and for more than three months on a second. The council recommends that the court may disqualify up to six months for a first conviction; that it shall disqualify for not less than three and not more than twelve months for a second conviction, and for not less than six months on any further convictions. For reckless or dangerous driving the law provides that on a first conviction an offender may be, and on a second conviction shall be, disqualified from driving. The council recommends that on the first conviction the court should have discretion to disqualify for not more than two years, and on a second or further convictions that the court must disqualify for not less than six months. In the case of driving under the influence of drink the council advocates no change, but where a person in charge of a motor vehicle (but not driving) is under the influence of drink the council recommends that the court should have discretion to disqualify for not more than twelve months. At present disqualification for at least twelve months is automatic for driving when uninsured. The council recommends that the court should have discretion with regard to ordering disqualification, and that in any case the period should not exceed twelve months. Driving when disqualified carries no further disqualification under the present law; the council recommends that the court shall disqualify for a further period of twelve months.

### Articled Clerks

AT the twenty-first autumnal meeting of the Institute of Chartered Accountants in England and Wales, on 8th October, the president, Mr. JAMES BLAKEY, made some interesting observations about indicators at which accountants should look in considering candidates for articles. He said that a short trial period, as recommended by the council, might often be desirable, and the primary consideration should be whether the candidate was likely to become a worthy member of the Institute. While spoon feeding by principals was undesirable, no experiences or opportunities should be denied to articled clerks. A principal should not hesitate, he said, to come to a mutual arrangement for cancellation of articles wherever he is satisfied that the articled clerk does not have the right aptitude, ability or professional outlook. The president continued: "Even if a candidate has not been too bright in the intermediate examination, he may well be worth encouraging because he has other qualities which are first class. On the other hand, if an articled clerk has a good brain but does not have the right kind of character and professional outlook he can later prove a menace to our Institute and a danger to the public. Again, if an articled clerk is so lacking in ability and aptitude as to be really unsuitable for the profession, he will just go on wasting his time failing the intermediate examination time and time again, unless he is persuaded to seek some more suitable career."

### Causes of Crime

LORD PAKENHAM has been asked by the Nuffield Foundation to undertake a critical appraisal of current views of the causes of crime, in order to ascertain which of them are based on tested evidence and which have gained currency without having, at present, any proved foundation. Lord Pakenham and his assistants hope to obtain the views and experience of a wide range of people with expert knowledge of criminals, including a number of criminals and former criminals. The Home Office, Scottish Office, and the Ministry of Education will help with advice and information. Lord Pakenham will be assisted by a small group of assessors, including Dr. DESMOND CURRAN, psychiatrist at St. George's Hospital; Dr. T. C. N. GIBBENS, Lecturer in Forensic Psychiatry at the Institute of Psychiatry, London University; Dr. M. GRUNHUT, Reader in Criminology at Oxford; Mr. FRANK MILTON, Metropolitan Magistrate; and Mr. LESLIE FARRER-BROWN, Secretary of the Nuffield Foundation.

# INCIDENCE OF DEATH DUTIES ON FOREIGN PERSONAL ESTATE—I

THIS subject is one which has in certain of its aspects received the consideration of the court within the past few years in *Re Cunliffe Owen, deceased; Mountain* v. *Comber* [1951] Ch. 964, 975; *Re Goetze, deceased; National Provincial Bank, Ltd., and Another* v. *Mond* [1953] 1 Ch. 96; and *Re Nesbitt; Dr. Barnardo's Homes National Incorporated Association* v. *Board of Governors of the United Newcastle-upon-Tyne Hospitals* [1953] 1 W.L.R. 595. In view of the importance of these decisions to executors it is proposed to review the general principles involved and to consider these decisions in the light of them.

*General principles*

In considering the principles of incidence it must always be borne in mind that their application is subject to the provisions of the particular will under consideration, which application may be displaced or varied by the presence in the will of such an intention.

It seems clear that free personal estate outside Great Britain does not pass to an executor *as such* (*Re Scull, Scott* v. *Morris* (1917), 87 L.J. Ch. 59 (C.A.)), and that the United Kingdom estate duty thereon is not a testamentary expense. Accordingly, in general the incidence of liability for this duty is upon the property itself (Finance Act, 1894, s. 9 (1)), to be borne by the beneficiary who takes the particular property. Thus where the foreign personalty is specifically given the position as to United Kingdom estate duty thereon is relatively simple. It would seem, however, that although an executor has power to pay pecuniary legacies out of personal estate to the exclusion of real estate, he has no power of marshalling as between different categories of personal property, and accordingly in the payment of pecuniary legacies out of the residuary personal estate the executor cannot be regarded as having paid these exclusively from any one type of personalty. Therefore, in so far as personalty comprises assets which must bear their own United Kingdom estate duty, the legatees must bear a proportionate share of that duty. Thus, where, to take a simple example, the residuary personal estate has a total value of £10,000 and includes foreign personalty having a value of £2,500, each pecuniary legacy must be regarded as having been paid as to one-quarter from the foreign personalty and as to three-quarters from the English personalty. A legacy of £100 will therefore (ignoring any question of relief) bear United Kingdom estate duty at the appropriate value on £25.

Location of the assets for the purpose of United Kingdom estate duty is determined by English law and, briefly, as to registered shares is determined by where the register on which they are transferable is properly kept, or as to bearer securities where the documents are found. There is no place in this article for discussion of this difficult subject. It must be mentioned, however, that the rules for determining the location of assets for duty purposes may be varied by agreement with other countries (see below).

The application of the Finance Act, 1894, s. 1, is universal. Accordingly, the English executor is accountable for, and is required to pay, the United Kingdom estate duty on all personal property wheresoever situated of which the deceased was competent to dispose at his death (*ibid.*, s. 6 (2)), except in so far as statutory exemption is available, for example, where the proper law regulating the devolution of the property is neither the law of England nor of Scotland, and the deceased did not die domiciled in Great Britain (*ibid.*, s. 28 (2)). It is not material whether the property is in the control of the English executor or whether foreign executors are appointed in respect of this property (*Re Manchester (Dowager Duchess); Duncannon (Viscount)* v. *Manchester (Duke)* [1912] 1 Ch. 540). There is, however, some concession in so far as blocked assets are concerned as regards the deferment of the collection of estate duty (see Statement by Solicitor-General, H.C. Debs. vol. 466, No. 144, col. 2307).

The liability of the executor for this duty is limited to the assets which he has received *as executor* or might, but for his own neglect or default, have received (Act of 1894, s. 8 (3)). It should be noted that the assets received "as executor" comprise a wider class than those received by the executor "as such." These are terms of art, and in very general terms the former relates to the assets which the executor receives in the performance of his duties as executor, whereas the latter relates to assets which pass to the executor in and by virtue of that capacity.

The existence of personal estate outside Great Britain will most probably give rise to liability for duties payable abroad in respect of the death of the deceased. Where the Commissioners of Inland Revenue are satisfied that, in respect of any property passing on the death which is in a foreign country, duty is payable in that foreign country in respect of that property, they will make *an allowance* of the amount of that duty *from the value of the property* for purposes of English estate duty, the liability being regarded as a debt due (Act of 1894, s. 7 (4)). (It will be observed that this relief relates to "foreign countries." This is possibly because it was anticipated that all "British Possessions" would make reciprocal arrangements (see below). British possessions which have not done so are treated as foreign countries for this purpose.) This is the "basic" relief which is available, but there are greater benefits which arise from arrangements made between Great Britain and other countries for relief from double taxation.

Firstly, by Order in Council it can be directed that as regards any particular British possession in the circumstances set out above, the relief shall be, not an allowance from the value of the property of the amount of duty, but an allowance by way of *deduction* of a sum equal to the amount of that duty *from the United Kingdom estate duty* payable in respect of that property (Act of 1894, s. 20 (1)). (This will be referred to later as "British Possession" relief.) A list of those British possessions to which this additional relief is applicable will be found in the standard works on the death duties.

Secondly, provision is made by the Finance (No. 2) Act, 1945, s. 54 (1), for giving effect by Order in Council to agreements entered into by H.M. Government on these lines with any Dominion, Colony or foreign country, and such agreements have already been concluded with a number of countries, including the United States of America, Canada and South Africa. There is no space in this article to consider the terms of existing agreements in any detail, but in general they provide certain rules for determining the domicile of the deceased and the situs of the assets for death duty purposes and provide reciprocal credit for duty in one country against duty paid in the other. By way of illustration the effect, briefly, of the Canadian Double Taxation Order is as follows. United Kingdom estate duty is assessed on the full value of the Canadian assets. *Credit* is then allowed by the United Kingdom authorities against the United Kingdom estate duty

for the Canadian succession duty attributable to the particular assets and paid in Canada. (For the purpose of the credit, the Canadian duty is converted into sterling at the rate of exchange on the date of payment.)

The exact terms of any one of these agreements require careful consideration, as, to mention but one factor, it may confine the relief to certain only of the death duties, as for example in the case of the South African agreement, which applies to Union estate duty and not to Union succession duty, as to which only the " basic " relief is available. It should be mentioned that where by agreement these further reliefs are available, the " basic relief " is excluded.

To ascertain the principles on which the incidence of liability for *foreign death duties* is founded is, it is submitted, in the present state of the law, not possible with any certainty. As will be seen after the cases referred to in the introduction have been considered, this entails consideration of whether these duties are testamentary expenses and whether the precise arrangements for the relief of United Kingdom estate duty are material and, if so, in what manner.

It has already been pointed out that the incidence of either United Kingdom or foreign death duties can be varied by the terms of the will, and it is not proposed to add to the length of this article by consideration of all the relevant cases on construction.

*The nature of the problem*

It will be seen that when an English executor is called upon to administer an estate which includes free personal estate outside Great Britain, the following matters require his consideration :—

(*a*) The extent of the liability for English estate duty and its relation to the value of the estate in his more immediate control.

(*b*) The difficulties which he may have in bringing into effective possession the foreign estate which he should receive " as executor." His difficulties in this respect are not in point as to his liability for English estate duty.

(*c*) The incidence of liability for (i) English estate duty and (ii) foreign death duties, taking into consideration the terms of the particular will and the relevant provisions for relief from double taxation. It may be emphasised here that equally careful consideration must be given to this problem whether or not there are special " free of duty " provisions in the will as regards legacies.

(*d*) The incidence of any relief in respect of the liability for foreign death duties.

It is with problems (*c*) and (*d*) that the recent cases referred to were particularly concerned and each will be considered individually from this aspect in chronological order.

*Re Cunliffe-Owen*

The estate of a testator who died on 22nd November, 1947, domiciled in England included personalty in Canada and South Africa. His will gave a substantial pecuniary legacy to *C* and, by cl. 7, directed that " . . . so much of the death duties payable with reference to my death in respect of all legacies whether specific or pecuniary annuities and all benefits given by this my will as shall be equal to the death duties at the rate in force at the date of this my will shall be paid and discharged out of my residuary estate." By cl. 9 the testator directed that : " Subject to the payment of my funeral and testamentary expenses and debts and the legacies and annuities given by this my will or any codicil hereto and all estate duty and succession or legacy duty payable on my real estate (including chattels real) and the duties on any legacies or annuities given free of duty by this my will or any codicil hereto . . ." the residuary estate should be held upon certain trusts for the benefit of (*a*) a person not related to the testator, and (*b*) children of the testator.

One question which fell to be dealt with in the Chancery Division was whether the phrase " the death duties," in cl. 7, extended to duties exigible outside the United Kingdom so as to render them payable out of the testator's residuary estate. In the course of his judgment, Wynn Parry, J., made reference to the rule of construction that *prima facie* a direction such as the present is to be construed as referring only to United Kingdom death duties (*Re Norbury* [1939] Ch. 528). He felt, however, after consideration of earlier decided cases (*Re Scott* [1915] 1 Ch. 592 ; *Re Norbury, supra ; Re Quirk* [1941] Ch. 46 ; *Re Frazer* [1941] Ch. 326), that the words could be given a wider scope if the circumstances were of a really compelling nature. The evidence established that the testator had widely-spread foreign interests and had, among other activities, been concerned in obtaining advice as to how to minimise the incidence of death duties on these various assets. Notwithstanding this, Wynn Parry, J., decided that there were no such compelling circumstances as to justify departure from the general rule. In arriving at this conclusion, factors taken into consideration were, firstly, that it would have been a simple matter for express words to be inserted in the will and, secondly, reference in cl. 9 to estate duty and succession or legacy duty, etc. (which, in the learned judge's view, related to United Kingdom duties) was followed by the phrase " and the duties on my legacies . . . given free of duty . . ." He considered that this provided the clue to the meaning of the phrase " the death duties " in the first extract quoted.

Accordingly, he held that the phrase " the death duties " was limited to United Kingdom death duties and that accordingly the pecuniary legatee and the respective residuary legatees would each have to bear the foreign duties attributable to the pecuniary legacy or share of residue. (Expert evidence had shown that by local law both Canadian and South African succession duty fell to be borne by the successor and not by residue generally.)

Relief to some degree from United Kingdom estate duty was available in respect of both Canadian and South African succession duty and further questions arising for determination concerned the incidence of any such reliefs, namely (i) was the pecuniary legatee, *C* entitled to any of the relief ? (ii) as regards residue should the reliefs be apportioned between the residuary legatees in proportion to the amount of such foreign duty borne by the respective legatees or in proportion to their respective interests in the residuary estate ? The importance of the second question was increased by the fact that in the case of both Canadian and South African succession duty the rate of duty varies according to the relationship of the successor.

In the course of argument on these further questions, attempts were made to show that the general rules of incidence of United Kingdom estate duty were varied by those provisions of the will, it being contended that the phrase " testamentary expenses " in cl. 9 included the whole of the estate duty payable in respect of the testator's personal estate wherever situated. The learned judge was, however, unable to find that the general rule of incidence was varied.

On the question of the incidence of the reliefs, it was held that as the beneficiaries concerned would eventually bear the United Kingdom estate duty on foreign personalty the credit for relief of United Kingdom estate duty should enure not for the benefit of the testator's estate generally, but for the benefit of the persons who have to bear the foreign duty.

As regards *C*, the pecuniary legatee, it was therefore ordered that payments in satisfaction of his legacy or of the United Kingdom estate duty thereon should be treated as paid out of assets situated in Canada in respect of the estate duty on which double taxation relief was accorded and the other assets of the estate in the proportions which the values of these classes of assets as valued at the testator's death for the purposes of estate duty in the United Kingdom respectively bore to one another, and, further, that *C* was entitled as between himself and the residuary legatees to a part of the benefit of any relief from United Kingdom estate duty in respect of assets situate in Canada proportionate to that part of such assets proper to be treated as applicable in payment of his legacy. A similar order was made as regards the South African assets.

As to the final question of the apportionment of relief between the residuary legatees, it will be recalled that the two classes of residuary legatee suffered Canadian and South African succession duty at differing rates, and the argument was put forward on behalf of the residuary legatee not related to the testator and whose rate of duty was therefore higher that relief should be divided according to the amount of the foreign duty borne by each residuary legatee. It was held, however, that as the residuary legatees must bear *United Kingdom* estate duty on the Canadian and South African personalty according to their interest in the residuary estate and as any credit given under the double taxation relief order was to be treated as a credit in respect of the United Kingdom estate duty payable in respect of the personal estate in Canada, it was only logical to apply the benefit in the shape of any credit in the same way as the division of the burden of United Kingdom estate duty was ascertained, that is by reference to the respective interests of the residuary legatees in the residuary estate.

In the concluding part of this article, *Re Goetze* and *Re Nesbitt*, and the conclusions to be drawn from all three cases, will be discussed.

A. K. S.

# THE ELEMENT OF FRAUD IN LARCENY

Among the best-known sections of English statutes is that which opens the Larceny Act, 1916—an example of the felicity with which a Sovereign Parliament can convert a complicated body of case law into a convenient form of words which an articled clerk can memorise, if he chooses, parrot-fashion. Formerly it was possible to argue, as was done in *R.* v. *Holloway* (1849), 18 L.J.M.C. 60, that larceny had never been exactly or completely defined. That case settled one point: *animus furandi* involves an intent to deprive the owner not merely temporarily but permanently of the possession of his property, so that where chattels were taken to bolster up a false claim to remuneration, the intention being to put them back afterwards, it was held that the offence of larceny had not been made out.

Other decisions, some of them much older, established the now familiar indispensability of other components in the crime of stealing. Though new, the definition in s. 1 of the Act of 1916 was not intended to alter the law, for the Act was a consolidating, and, in this particular, a codifying measure. Thus it remains possible, to the satisfaction of tutors and to the profit of their students, to illustrate the ingredients in the statutory definition by reference to the older decided cases of which the principles, before 1916, constituted the nearest approach there was to a working description of the crime. And here it may be remarked that the importance of s. 1, and of the cases illustrating it, is not confined to those offences which go by the name of larceny. An intent to steal is a vital element in the constitution of other crimes dealt with in the Larceny Act, for instance, that under s. 30 of demanding with menaces with that intent. The phrase is to be interpreted in these instances in the light of s. 1 (*R.* v. *Bernhard* [1938] 2 K.B. 264); and so also with the word "stolen" in s. 33, which deals with the offence of receiving, not forgetting in the latter case that receiving is criminal if the receiver knows the property to have been obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, not necessarily by larceny.

In classifying the illustrative cases, text writers have split the section into phrases. Thus "without the consent of the owner" is happily explained by contrasting *R.* v. *Egginton* (1801), 2 Bos. & P. 508, with *R.* v. *Turvey* [1946] 2 All E.R. 60. In the one case the owner, with the object of detecting the prisoners, gave them facilities for carrying out the theft, but he had not induced it or consented to it; in *Turvey's* case, on the other hand, the owner's servant, acting on instructions from his master, actually handed over the property to the appellant as part of the plan of amateur detection. This was not larceny. As we have already noticed, *R.* v. *Holloway* is an exemplification of the phrase "with intent . . . permanently to deprive the owner"; the expression "takes and carries away" may be similarly brought to life through the medium of the facts in *R.* v. *Taylor* [1911] 1 K.B. 674, where a pickpocket succeeded in moving a purse from the bottom of the prosecutor's pocket but took it no further than the edge of the pocket, whence it was returned in the ensuing struggle to its original resting place. This was sufficient asportation.

Now it will be remembered that it is essential to the crime of stealing that the taking must be done "fraudently and without a claim of right made in good faith." The whole of this phrase is usually thought of as one, and it is not too much to say that the emphasis has generally been on the kind of claim of right which, by virtue of the inclusion of the phrase in the definition, will afford a good defence to a charge of larceny. So long as the jury is satisfied that such a claim existed *bona fide* the legal validity of the claim is immaterial (*R.* v. *Bernhard*, *supra*). The latest decision on the section is interesting because its facts gave the Court of Criminal Appeal occasion to explore the meaning of the word "fraudulently," and to demonstrate the force of that word in s. 1 as something more than a mere paraphrase of the words which immediately follow it.

*R.* v. *Williams* [1953] 1 Q.B. 660 was the appeal of a sub-postmistress and her husband against convictions on an indictment charging larceny and other offences. The sub-post office was conducted on the premises of a shop belonging to the husband. There were financial difficulties in connection with the shop business, and both appellants were parties to the taking of money belonging to the Postmaster-General and to the use of it in the business of the shop. They were convicted of larceny of specific sums of money, the jury adding a rider to their verdict to the effect that, as regards some of the counts, the appellants intended to repay the money and honestly believed that they would be able to do so, and that, so far as other counts were concerned, they had a similar intention but no such honest belief.

One of the counts was bad for duplicity, and to that small extent the appeal succeeded. The interesting point is the view the Court of Criminal Appeal took of the jury's rider.

It could not be said that the appellants took the money with any claim of right, but on their behalf it was argued that it was the duty of the court to give a meaning to every word in s. 1 of the Larceny Act, and that the taking did not merit the epithet "fraudulently" if the appellants intended to repay and had reasonable grounds for thinking that they could do so. Furthermore, it appears to have been argued, in effect, that an intention to repay is not consistent with an intention permanently to deprive the owner of the money. The court dealt with this last point by observing that the larceny alleged was of the actual coins and notes taken from the till. Having taken these coins and notes and used them in the shop business, there was no question that the appellants intended permanently to deprive the Postmaster-General of those coins and notes.

But the appellants might quite properly have accounted to the Post Office authorities by paying over different coins or notes of a like amount representing the full amount of the takings. The court asked itself whether it made any difference that the appellants intended to repay in this way. This is the part of the case which turned on the word "fraudulently" in the definition of stealing. The court thought that this word was intended to and did add something to the words "without a claim of right" and that it meant (at least in the *Williams* case) that the taking must be intentional, under no mistake, and with the knowledge that the thing taken is the property of another.

Discussing the defence of intention to repay, Lord Goddard, C.J., says: "It is one thing if a person with good credit and with plenty of money uses somebody else's money which may be in his possession and which may have been entrusted to him or which he may have had the opportunity of taking, merely intending to use those coins instead of some of his own which he has only to go to his room or to his bank to obtain. No jury would then say that there was any intent to defraud or any fraudulent taking. It is quite another matter if the person who takes the money is not in a position to replace it at the time but only has a hope or expectation that he will be able to do so in the future." In considering the jury's rider, the court bore in mind the charge delivered to an earlier jury by Channell, J., in the case of *R.* v. *Carpenter* (1911), 76 J.P. 158, which the court had already described (in *R.* v. *Kritz* [1950] 1 K.B. 82) as the *locus classicus* on matters of fraud. That address culminated in the observation that the question whether certain statements were made with intent to defraud comes substantially to this: whether or not the statements were honestly made. Though *Carpenter's* case was concerned with false pretences, the court declared the words of Channell, J., to be equally apposite on the point of honest intention in the case of larceny, substituting "actions" for "statements."

Even though the jury had found an honest belief in the appellants that they would be able to repay, therefore, that was no answer to larceny, because the taking was dishonest. The appellants intended to use the money for purposes different from those for which the Postmaster-General, to their knowledge, intended they should use it. Their hopes and expectations of repayment were at most matters of mitigation.

Deficiencies of the kind for which the postmistress was responsible are often, as the court pointed out, more conveniently charged as fraudulent conversions than as larcenies. That gets over the difficulty of proving the taking of specific sums on particular occasions, which may be awkward in some cases where the duty is merely to account for an aggregate or balance of sums received or entrusted, and not to hand over the identical notes and coins so received. Nevertheless the element of fraud requires to be proved by the prosecution and is of the same kind as explained by the court in the recent case.

A simple illustration mentioned by Lord Goddard serves to generalise the reading of "fraudulently" as importing deliberation and not mere mistake. A person picks up another's suitcase at a railway station. If he believes it to be his own, although he is not setting up a claim of right, he is acting under a mistake and therefore not fraudulently. But if he knew it was not his own, then it would be larceny.

J. F. J.

## *A Conveyancer's Diary*

# THE ENFORCEABILITY OF VOLUNTARY COVENANTS

SUBSCRIBERS who have read the articles on this subject which appeared in this Diary at pp. 582, 600 and 618, *ante*, have asked me to comment in this connection on the judgment of Denning, L.J., in *Smith & Snipes Hall Farm, Ltd.* v. *River Douglas Catchment Board* [1949] K.B. 500.

The decision of the Court of Appeal in this case can best be summarised in a series of propositions. The defendant board entered into an agreement under seal with a number of landowners, including *A*, whereby it was agreed that in consideration of the board's constructing certain works and maintaining them in good condition for all time the landowners would contribute to the cost. The works were executed, as was found, defectively, and some years afterwards the river burst its banks and flooded certain meadows which, at the time of the agreement, had belonged to *A*. This was held to be a breach of the covenant on the part of the board to maintain the works, and as damage was proved, the board was *prima facie* liable on the covenant with *A*. But in the interval between the agreement and the flood, *A* had sold his land, including the meadows which were subsequently flooded, to *B*, and *B* had let these meadows to *C*. In an action by *B* and *C* against the defendant board for damages for breach of contract (an alternative claim for damages in tort not being proceeded with) it was objected in bar of the claim that no such action lay at the suit of *B* or *C* because neither of them was a party to the agreement, and there was therefore no such privity of contract between either of them and the defendant board as could support an action in contract.

The Court of Appeal rejected this defence, for the following reasons:—

(1) On the authority of *Congleton Corporation* v. *Pattison* (1808), 10 East 130 (*per* Bayley, J., at p. 135), a covenant runs with the land, or touches and concerns the land, if it either (*a*) affects the land as regards mode of occupation, or (*b*) is such that it *per se*, and not merely from collateral circumstances, affects the value of the land. The covenant in this case satisfied both these tests, for it affected the value of the meadows by converting them from land liable to flooding into land fit for agricultural use, and it showed an intention that the benefit of the obligation should attach to the meadows into whosesoever hands these might pass.

(2) It was argued that *B* could not enforce the covenant against the board because the land had been conveyed to him not by the board but by *A*, a stranger. But there is no distinction in this respect between a covenant made with a person who conveys the land to which it relates and a covenant made with a stranger: *The Prior's Case* (Smiths' Leading Cases, 10th ed., vol. 1, p. 56); Coke upon Littleton, 389*a*.

(3) The burden of the covenant in this case might not run with the land, being an affirmative covenant (*Austerberry* v. *Oldham Corporation* (1885), 29 Ch. D. 750), but this was no difficulty, since the benefit of a covenant concerning land may run with the land while the burden of the same covenant may not (*Rogers* v. *Hosegood* [1900] 2 Ch. 388, 395). In this case, the covenant was clearly binding upon the board, the original covenantor.

(4) The covenant had been entered into by the defendant board with *A*, *simpliciter*, not with *A* and her successors in title, owners for the time being of the land in question; but this did not prevent *B* from suing upon the covenant, because (*a*) the conveyance from *A* to *B* expressly included the benefit of the covenant, and (*b*) under s. 78 (1) of the Law of Property Act, 1925, a covenant relating to any land of the covenantee (in this case, the meadows in question) is deemed to be made with the covenantee and his successors in title and has effect as if such successors were expressed.

These are, broadly speaking, the reasons given for the decision by Tucker, L.J. (as he then was), and Somervell, L.J., in their respective judgments. With this conclusion Denning, L.J., also agreed, but the reasons given by him for his decision, while in part coinciding with those of his learned brethren, in part took an individual line.

Disregarding points peculiar to the facts of the case, as of no general application where the question of the enforcement of covenants is being considered at large, this judgment falls into three parts. First, the learned lord justice adverted to the argument that lack of privity of contract between the parties made the covenant in question unenforceable. That argument, in his view, could be met either by admitting the principle that no one can sue on a contract who is not a party thereto, and saying that it did not apply to the case, or by disputing the principle itself, and Denning, L.J., preferred to dispute it. The principle, in his judgment, had not reached full growth until very recent times, and it had never been able wholly to supplant another, and more deeply rooted, principle, namely, "the principle that a man who makes a deliberate promise which is intended to be binding, that is to say, under seal or for good consideration, must keep his promise; and the court will hold him to it, not only at the suit of the party who gave the consideration, but also at the suit of one who was not a party to the contract, provided that it was made for his benefit and that he has a sufficient interest to entitle him to enforce it."

Denning, L.J., then went on to consider the particular application of this broad principle in the case before him, viz., the case of covenants concerning land, and this part of the judgment does not differ very greatly from those of the other members of the court: the covenant by the board was clearly intended to be for the benefit of the owner for the time being of the land, and s. 78 (1) of the Law of Property Act, 1925, removed the difficulty that would otherwise have existed here, i.e., that the successors in title of the covenantee were not expressed. The conclusions drawn from this, however, appeared to Denning, L.J., to be founded on a wider principle than the similar conclusions drawn from the authorities, and from the provisions contained in s. 78 (1) of the Act of 1925, by Tucker and Somervell, L.JJ. In the judgment of Denning, L.J., "the result was that the plaintiffs come within the principle whereby a person interested can sue on a contract expressly made for his benefit."

Lastly, this judgment contains certain observations on s. 56 (1) of the Law of Property Act, 1925, which provides that a person may take the benefit of any covenant respecting land or other property although he may not be named as a party to the instrument containing it. This provision, Denning, L.J., thought, was a statutory recognition of the principle to which he had referred, and was applicable to the case before the court. This, if one may say so with respect, is a possible interpretation of this extremely difficult and obscure provision, but it ignores the historical background to the section (see the judgment of the present Lord Chancellor, then sitting at first instance, in *White* v. *Bijou Mansions, Ltd.* [1938] Ch. 351, which puts part at least of this provision in its setting).

But in relation to the suggestion, which I made in my earlier articles on this subject, that a possible interpretation of the relevant authorities is that a voluntary covenant by *A* to transfer property to *B* is unenforceable despite the presence of a seal, the important part of this judgment is that which states the broad principle of enforceability of certain contractual obligations which I have set out above. At first sight this seems to suggest that, provided that a promise is intended to be binding, the promisor must keep his promise; and certainly, if this is so, a covenant of the kind with which my earlier articles were concerned must bind the promisor, for such covenants would most readily be construed as having been intended, in their inception, to be binding. But closer examination of this part of the judgment shows, I think, that this is a facile view of the underlying principle to which Denning, L.J., was referring. In the statement of this principle the learned lord justice equates the requirement that a promise, to come within this principle, must be deliberately made and intended to be binding, with the presence of consideration, which may for this purpose take the form either of a seal or of good consideration. This certainly seems to suggest that if a voluntary covenant to transfer property is under seal, nothing more will be required to make it enforceable. But the statement of this principle by Denning, L.J., is immediately followed by examples of its application, and these, starting with *The Prior's Case* and ending with the kind of tripartite arrangement which came before the court in *Re Schebsman* [1944] Ch. 83, seem to indicate that the question to which this principle, stated in this broad way, was intended by its author to afford a solution was not the question whether a given contract is supported by consideration or not, but the question whether, assuming the presence of consideration, a person not a party to the contract could enforce it. This interpretation of this judgment is, of course, strongly supported by the fact that the point on which this decision turned was neither the presence or absence of consideration nor its quality, but the ability of a person not named as a party to a particular covenant (which in the particular circumstances had been entered into for valuable consideration) to enforce that covenant.

If this is the correct interpretation to put on this interesting judgment, there is nothing in it which can affect the conclusions, such as they were, which I drew from the authorities reviewed by me in this Diary a month or two ago.

"A B C"

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On 5th October a presentation of a 200-years-old desk, on behalf of the council, was made to Sir Colin Campbell, who retired from the position of Town Clerk of Plymouth on 30th September.

***Landlord and Tenant Notebook***

# PERDURABILITY OF STATUTORY TENANCIES

"SITTING Tenant Salesman Required" runs the heading of an advertisement in the "Appointments and Situations Vacant" section of a well-known daily newspaper (issue of 7th October). The context indicates that the advertisers seek an employee—a "skilled sitting tenant sales negotiator" who will be provided with a car but must be prepared to work hard—who is to be engaged in arranging the sales of freehold dwellings to occupying tenants protected by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939; many of them statutory tenants. And one wonders whether applicants will be asked, in the course of interviews, such questions as "You are, of course, familiar with the judgment in *Brown* v. *Draper?* And with Mr. Megarry's strictures thereon? And with the problems mooted in 'Points in Practice' in the SOLICITORS' JOURNAL of 26th September last (97 SOL. J. 671) and subsequent correspondence?"

In the judgment referred to we find ([1944] K.B., at p. 313): "There are, we think, only two ways by which a tenant whose contractual tenancy has come to an end can lose the protection of the Acts. One is, as we have stated, by giving up possession. The other is by an order against the tenant for recovery of possession." This statement has been challenged by Mr. Megarry, who in his sixth edition wrote that there appeared to be four, and in his seventh that there appear to be at least six ways (including the two) (and I am indebted to the author named for the expression "perdurability"). And the problem mooted in this journal was, substantially, this: a protected tenant and his wife are willing to buy the freehold interest, with the assistance of a building society mortgage; how is the tenancy to be extinguished, regard being had to the fact that at some future date the society might want to sell with vacant possession?

Among the suggestions which have reached us since the "Point" and answer were published are two which are particularly worth examining.

One is as follows: let the husband (the statutory tenant) join in the purchase, making the husband and wife sub-purchasers. "The vendor would then convey, and the husband would convey and confirm to the husband and wife, as beneficial owners. The statutory covenants for title would then surely be sufficient to prevent the statutory tenant from setting up his rights as such against the husband and wife jointly or against any person deriving title under them."

I am far from saying that this device would not succeed, but must make the comment that it appears to underestimate the nature and extent of the protection conferred by the Rent Acts. *Brown* v. *Draper* was itself a case in which the tenant was, as it were, found to be protected against himself. "Statutory" in the expression "statutory covenants" has not the same significance as the same adjective in the marginal heading of s. 15 (1) of the 1920 Rent Act: "Conditions of Statutory Tenancy." In the case of covenants, it merely means covenants which will be implied from the use of specified technical expressions, in order to save the amount of verbiage which had to be inserted in covenants before the passing of the Conveyancing Act, 1881. Accordingly, the device might conceivably be rejected as another attempt to contract out of the Acts indistinguishable as such from those made in *Brown* v. *Draper;* nor does the doctrine of estoppel apply: *Welch* v. *Nagy* [1950] 1 K.B. 455 (C.A.). Parties cannot confer unfettered jurisdiction by their own acts.

The other proposed solution suggests, in effect, that there is no problem to be solved, because, once the tenant has purchased, he is no longer occupying as tenant and the doctrine of "changed character of occupation" as described in Megarry would apply. Personally, I consider the suggestion highly plausible, and it is only because it is the function of this "Notebook" to consider cons as well as pros that I propose to offer some criticism.

"A tenant cannot claim the protection of a statutory tenancy if he changes the character of his occupation from that of a protected tenant to, e.g., that of a purchaser . . ." (Megarry). I will deal with other examples presently, for the purchaser one is, of course, most in point. The authority cited is *Turner* v. *Watts* (1928), 44 T.L.R. 337 (C.A.), in which a weekly tenant entered into what Scrutton, L.J., called an "odd" agreement to purchase the house but which was held to effect a surrender of the tenancy; after its conclusion her possession was at most that of a tenant at will at no rent, which tenancy was to be ignored for rent restriction purposes. Consequently, when the ex-landlord vendor exercised a right of rescission, he was held to be entitled to possession. An argument based on this decision is indeed likely to prove cogent. While the tenancy surrendered was a contractual one, and I agree with Mr. Megarry's observation "it is not easy to see what provision in the Acts endows a statutory tenancy with qualities of tenacity and perdurability so greatly exceeding those of the contractual tenancy out of which it arose," yet I must remark that the *dictum* of Lord Asquith in *Rogers* v. *Hyde* [1951] 2 K.B. 923 (C.A.), treating *Foster* v. *Robinson* [1951] 1 K.B. 149 (C.A.) as authority for the proposition that a contractual and non-protected tenancy could replace a statutory tenancy by a notional surrender and re-grant or by other means was dissented from by McNair, J., in *Murray Bull & Co., Ltd.* v. *Murray* [1953] 1 Q.B. 211; the learned judge expressing the view (equally *obiter*) that a true statutory tenancy can be brought to an end only by actually giving up possession or its equivalent or by an order for possession. Admittedly, the "or its equivalent" might, it could be argued, include change of character of occupation; but it is doubtful whether this was in McNair, J.'s mind.

The next instance given is change of occupation from that of protected tenant to licensee, and *Foster* v. *Robinson, supra,* and *Rogers* v. *Hyde, supra,* are cited. In the former, a protected contractual tenancy was indeed held to have been determined by surrender by operation of law; but Evershed, M.R.'s very comprehensive judgment, while agreeing that *Brown* v. *Draper* applied "generally" to both contractual and statutory tenancies, was based on the fact that there had, in the circumstances, been "the equivalent" of a yielding up of possession; an old employee, tenant of his employer, had been allowed to occupy rent-free. When one considers that (as our correspondent whose suggestion I am discussing has pointed out) there can be no effective surrender or merger of a statutory tenancy—not an estate—it seems the more doubtful that the signing of a "declaration"—the *modus operandi* mentioned in the original "Point in Practice"—could have the desired effect. At all events, one would have to expect a court to scrutinise with some thoroughness the circumstances of the "change of character,"

and perhaps consider whether the tenant really appreciated the burdens of ownership. In *Rogers* v. *Hyde* the tenancy concerned was indeed a statutory one and was treated as having been extinguished by the terms on which an action was settled; but no mention was made of *Brown* v. *Draper!*

Then, by reference to *Moses* v. *Lovegrove* [1952] 2 Q.B. 533 (C.A.), a squatter acquiring title by adverse possession is suggested as an example of change of character of occupation. There were, indeed, judicial observations by Evershed, M.R., to the effect that a protected tenant who had not paid rent for ten years and had denied the landlord's rights could not, on being sued, successfully contend that the dwelling-house was one subject to a letting within the meaning of "the Rent Act." Undoubtedly this *dictum* supports the view that status can be changed by change in character of occupation, the court being perhaps in the position of an umpire called upon to decide whether a batsman has struck the ball with intent to score.

The last example I will take is that of holding at a rent less than two-thirds of the rateable value. *J. & F. Stone Lighting and Radio, Ltd.* v. *Levitt* [1947] A.C. 209 supplies the example of this kind of change in character of occupation. A service tenant, on his employment ceasing, had agreed to pay a rent of £1 a week (which would make the tenancy controlled) instead of 10s. a week (which was less than two-thirds of the rateable value). When, after giving notice to quit, the landlords, his former employers, sued for possession, he alleged that the premises had a standard rent of 10s., and the landlords conceded that point. Dismissing the claim on the footing that no ground had been established, the county court judge gave judgment for the defendant for the return of excess payments. Some time later the landlords gave another notice to quit and sued for possession again, this time alleging that the 10s. rent (which had been paid and accepted since) took the flat out of the Act. The county court judge decided that by virtue of his previous decision he had no jurisdiction. Ultimately, the House of Lords held (*a*) that despite the previous decision erroneously deciding that the tenancy was protected, there was jurisdiction to entertain the second action, the landlords therefore not being estopped either by conduct or by *res judicata* and, what is important for present purposes, (*b*) that the parties had created a new tenancy at the agreed rent of 10s.

It is certainly difficult to reconcile the somewhat dogmatic passage in *Brown* v. *Draper* with the above and in the result I do consider that there is much to be said for limiting its scope to cases in which the giving up of possession is in issue, and for agreeing with the correspondent who would base mortgagees' and derivative rights on changed character of occupation. But it is important to note the "he" in Mr. Megarry's "A tenant cannot claim the protection . . . if *he* changes the character, etc." This may explain the doubt in Dankwerts, J's mind when giving judgment for mortgagees in *Nicholls* v. *Walters* [1953] C.P.L. 497.

R. B.

# HERE AND THERE

## COMEDY FOR LAWYERS

LAWYERS, more than most other people, like going to a play, not because it is different, but because it is the same, not because it is strange, but because it is familiar. Their favourite recreation is not to get away from the shop, but to take the shop with them into every kind of fantastic dreamland, even when it is as elusive as the shop kept by the old sheep, which Alice found through the looking-glass. They like a good trial scene, and if it takes up the whole of the action and is a replica of the High Court or the Old Bailey where they have spent their working day, so much the better, far better, they feel, than perilous seas and fairylands forlorn. Now, from this point of view it is unfortunate that "Trial and Error," by Kenneth Horne, at the Vaudeville Theatre, has no trial, at least only a reported trial, and no legal character, not even a fleeting glimpse of a family solicitor, only an abstract of counsel's opinion. Yet a lawyer ought to be able to spend a happy evening here, for not only is it uproariously funny, balancing adroitly on that indefinable point where comedy hovers just on the verge of farce, but it also has a legal problem to argue over at supper or in the car going home. The central situation round which the whole play revolves is this: A woman has been tried at the Old Bailey for murdering her husband by pushing him off a liner into the sea. She has been acquitted and within about a year, without apparently having taken any steps to ask the High Court to presume his death, she has married again and gone down for her honeymoon to a house on the Sussex coast. That very evening her husband cheerfully reappears. After falling off the ship he had spent a year in Africa, beyond the reach of news, and quite unaware of his wife's predicament. For contrast, the second husband is a man of substance and steady respectability, the first a cheerfully uninhibited bounder. So what? Who's to keep the lady and what is her position in law? Obviously her second marriage is a nullity. Yet equally obviously she would have a good defence to a charge of bigamy. That follows, I think, from *R.* v. *Tolson* (1889), 23 Q.B.D. 168, for she believed *bona fide* on reasonable grounds that her husband was dead. But suppose, in that accommodating way they have in this sort of comedy he was willing to resign her to his successor, would the consummation of the second supposed marriage give him grounds for divorce? It's a nice point, but my own impression is that it would. Incidentally one wonders how the lady got as far as she did without applying to the court. What happened about proving her husband's will or winding up his estate? One can only suppose that a man so irresponsible left neither will nor estate. And anyhow the lady herself had a knack for getting hold of the wrong end of the legal stick, even to suggesting that, having been acquitted of murdering him, she was now free to murder him with impunity. One way and another this is a good "busman's holiday" for a tired lawyer, with enough of a professional problem to give him his cue to argue or to expound.

## TWO DEFAMATION CASES

NOT all the recent news from the Italian peninsula has been of the Trieste crisis. One reads of an impending libel action of very unusual quality. You remember how not long ago the Marquis de Cuevas entertained 4,000 guests at a night-long costume ball at Biarritz at a cost estimated to have been between £15,000 and £60,000. It was undoubtedly a picturesque affair at which even the 400 attendant police officers wore eighteenth century uniform. Opinions on such an entertainment in such a time as ours may vary widely according as one looks at it from the point of view of the *Tatler* or of the *Daily Worker*. The *Osservatore Romano*, the Vatican newspaper, took an unfavourable view, commenting severely on the extravagance of this "festival of ostentation and vanity." Now the Marquis is suing the newspaper for defamation and also (pending further elucidations, rather unexpectedly) for incitement to murder. The case will, of course, be heard in the Vatican's own courts and ought to be well worth reporting. I have never studied the niceties of the law of defamation in Vatican City, but in the Republic of Italy it seems to be capable of taking some rather unexpected turnings. Two writers recently composed a film script making game of the Italian generalship in the

campaign in Greece early in the last war. They have now been arrested on a charge for which it is hard to find an exact equivalent in English law, but which seems to lie somewhere between criminal libel and sedition. The gravamen would appear to be that they have insulted the army, and if and when the case comes to trial there will be a nice point to be argued: since the army in question was not only defeated but ultimately in 1944 disbanded, how can it be an offence in 1953 to libel a decomposed organism? However, pending a decision on that point, its soul goes marching on, and as the arrests have been made under military law there is apparently even some difficulty about the granting of bail.

### NUREMBERG CHICKENS

WHILE no normal man had any doubt about the wickedness of the crimes imputed to the accused at Nuremberg, a great many people had very grave doubts about the soundness of the proceedings there, despite the gallant attempt of the British representatives to guide them into the best Central Criminal Court channels. It was a very curious sort of egg to lay in the nest of the dove of peace and now the Nuremberg chickens are beginning to come home to roost, for some of the curious conceptions of "war crimes" and how to deal with them, of which we have been having news from the north side of the line in Korea, illustrate the sinister possibilities of the precedent we set. Now from a very different quarter comes a proposal for an international penal code to cover mass deportations and massacres, manhunts for forced labour, the waging of modern war, except in self-defence, all the crimes being within the jurisdiction of international tribunals with neutral judges. "One who is outside the quarrel feels there is something wrong when, at the end of hostilities, he sees the conqueror judge the conquered for the crimes of war, when the conqueror himself has been guilty of similar deeds towards the conquered." The proposal comes from His Holiness the Pope.

RICHARD ROE.

# BOOKS RECEIVED

**Underhill's Law relating to Trusts and Trustees.** Third Cumulative Supplement to the Tenth Edition. Containing all developments up to 1st September, 1953. By M. M. WELLS, M.A., of Gray's Inn, Barrister-at-law. 1953. pp. xv and 25. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

**Income Tax Law and Practice.** Twenty-fifth Edition. By CECIL A. NEWPORT, F.A.C.C.A. (Double First and Prizeman), Fellow of the Institute of Taxation; and OLIVER J. SHAW, Barrister-at-law, of Gray's Inn. 1953. pp. xxxix and (with Index) 400. London: Sweet & Maxwell, Ltd. £1 7s. 6d. net.

**A Simplified Form of Executorship Accounts.** By D. R. BEDFORD SMITH. 1953. London: The Incorporated Accountants' Research Committee. 2s. net.

**The Organisation and Accounts of Companies Limited by Guarantee.** By R. R. COOMBER, F.C.A., F.S.A.A. 1953. London: The Incorporated Accountants' Research Committee. 2s. net.

**The Structure of Companies in Relation to Taxation.** By H. MAJOR ALLEN, Barrister-at-law, and W. G. A. RUSSELL, F.S.A.A. 1953. pp. 26. London: The Incorporated Accountants' Research Committee. 2s. net.

**Practical Aspects of Saving Estate Duty.** By GEOFFREY TRIBE, Barrister-at-law. 1953. pp. 11. London: The Incorporated Accountants' Research Committee. 2s. net.

**Natural Causes.** By HENRY CECIL. 1953. pp. 251. London: Chapman & Hall, Ltd. 12s. 6d. net.

# REVIEWS

**The Legal Aspects of Business.** Third Edition. By H. R. LIGHT, B.Sc. (Lond.), F.C.I.S. With a Foreword by Sir ROLAND BURROWS, Q.C., LL.D. 1953. London: Sir Isaac Pitman & Sons, Ltd. 15s. net.

This work is getting better from edition to edition. It is a primer of law, dealing with general principles of law, and is particularly well suited for the requirements of students preparing for a professional business career, such as bankers, accountants and company secretaries. The first edition could be recommended only with reserve, but the author has succeeded in successive editions in strengthening the parts of his work which formerly were weak, and the book has now a degree of accuracy, balance and thoughtfulness which justify its unqualified recommendation. The modern statutes, such as the Intestates' Estates Act, 1952, and the Defamation Act, 1952, are competently referred to and the book is illustrated by well-chosen illustrations from modern cases.

**Ranking, Spicer and Pegler's Mercantile Law.** Ninth Edition. By W. W. BIGG, F.C.A., F.S.A.A., and C. N. BEATTIE, of Lincoln's Inn, Barrister-at-Law. 1953. London: H.F.L. (Publishers), Ltd. £1 1s. net.

The ninth edition of this work, which is particularly popular with students of accountancy, appears in a new style which reduces its bulk. It is completely revised and, in addition to a general chapter on contracts, contains chapters on agency, sale of goods, negotiable instruments, suretyship and guarantees, insurance, bailments, carriage, securities, partnerships, and arbitration and awards. The statement of the editors in the Preface that there have been no important legislative changes since the appearance of the previous edition in 1948 is fortunately not borne out by the book itself, which refers fully to the Arbitration Act, 1950, and has also a paragraph on the Disposal of Uncollected Goods Act, 1952. References to modern case law are conscientiously worked in and, in particular, the treatment of the rule in the *High Trees House* case (p. 24) is satisfactory. In the next edition reference should be made to *Comptoir d'Achat* v. *Luis de Ridder* [1949] A.C. 293 and *Gallagher* v. *Shilcock* [1949] 2 K.B. 765. On the whole a satisfactory, accurate and concise primer of mercantile law.

**The Nature of Evidence.** By the Rt. Hon. Sir ALFRED BUCKNILL. 1953. London: Skeffington & Son, Ltd. 10s. 6d. net.

There is always something fascinating in the writings of men who have made great names otherwise than by the pen. The reminiscences of a public man often sell better than a novel, but on a higher plane is the case of an expert letting his readers into part of his secret for their benefit. Sir Alfred Bucknill hopes that his little book may be of help to someone who is not learned in the law but has, in the course of everyday life, to ascertain the relevant facts. Needless to say it amply fulfils this hope.

But it does more. With a flourish of irrelevance which every one of his readers will condone, the author contrives to deal sympathetically in two later chapters with some modern matrimonial problems, and on a topic of that kind who is there whose views would be more valuable? And that is not all. Sir Alfred takes up again in his final chapter his main subject-matter of the nature of evidence and, under the heading of "Instinct," advances his belief in the subconscious and the immaterial, ending with an eloquent statement of Christian philosophy. It is a memorable book.

**Law and the Countryman.** By W. J. WESTON, M.A., Barrister-at-Law. 1953. London: Rupert Hart-Davis. 7s. 6d. net.

This book is, in the main, a reprint of articles on various legal topics originally contributed to *Country Life* and now revised and arranged systematically in chapters according to subject-matter. It does not, therefore, claim to be either a complete manual or a practitioner's guide. But as a general survey of the legal aspect of the relationships between the countryman and his neighbours and those with whom he has dealings, not forgetting the authorities who demand rates and taxes from him, it is remarkably useful, providing at least a "first aid" answer to very many of the problems which beset him. It is, therefore, a pity that no one saw fit to furnish it with an index. The author's style is easy, intelligible, free from technical obscurities and in places not without a lively humour. Without detriment to its readability he could have allowed himself a little more formality in his citation of cases and their precise references, but for the layman and even the lawyer this is a useful book.

**Oaths and Affirmations.** By D. BOLAND, M.B.E., and B. H. SAYER, LL.B., Clerk of the Lists, Queen's Bench Division, Crown Office and Associates Department. With a Foreword by the Hon. Sir ALBERT NAPIER, K.C.B., Q.C. 1953. London: Stevens & Sons, Ltd. 16s. net.

This so far slender volume appears to be designed as a successor to "Stringer," of which there has been no edition since 1929. Its plan is to deal in logical sequence with the powers and duties of commissioners and others appointed to administer oaths, the mechanical incidents of oaths, affirmations, affidavits, evidence out of court and before specific tribunals, oaths of allegiance and unlawful oaths and offences. In four appendices (about twice the length of the text proper) are set out extracts from relevant statutes and rules, skeletons of applications for commissionership, and 143 forms of oath for a great variety of occasions.

The authors are Supreme Court officials, and it is most valuable, therefore, to have their concisely stated summary, which is fully referenced in footnotes, of the requirements of the courts in the matter of affidavits and obtaining evidence otherwise than at a trial. There are some points, however, at which the book is disappointingly meagre. For instance, merely to paraphrase the statutory power of income tax commissioners to examine witnesses on oath without indicating how very rarely this is done is a little one-sided. And although several sections of the Perjury Act are set out *in extenso*, including the somewhat formal "Savings" provision, we can find no reference in the text or elsewhere to s. 13, as to the need for corroboration of falsity in all proceedings under the Act.

**The Changing Law.** By the Rt. Hon. Sir ALFRED DENNING. 1953. London: Stevens & Sons, Ltd. 10s. net.

The busy solicitor who spares an hour or two from the daily round of his practice to digest this little collection of addresses by Lord Justice Denning will find them stimulating in not at all an arduous sense. The legal profession has, as the preface says, usually found itself divided for and against changes in the common law. There is no doubt in which camp the author has pitched his tent, though it is fair to say that he describes the middle course that "we have somehow usually found" as the happy mean.

It is not statutory change which interests Sir Alfred, so much as gradual development through new judicial decisions. And he discusses a number of modern cases in which the courts, on specific topics, have gone further than courts have gone before. Whether it is accurate to label the process thus illustrated as one of change is the moot point. An enlightened application of a well-known principle to a new case, even a choice on grounds other than strictly rational ones between two principles, conflicting but both possibly in point—these are familiar means by which over hundreds of years the common law has been kept alive. In modern conditions there are many more fresh instances of fact. The process of development will, therefore, be more noticeable to an observer who has the leisure and detachment necessary to take in the whole panorama. But does that mean that the law's principles are becoming more uncertain or that the law itself is changing? We think not and thereby, says the author, delude ourselves. However, we cannot but enjoy the manner of his telling us.

**Governmental Liability.** A Comparative Study. By H. STREET, LL.M., Ph.D., Professor of Law in the University of Nottingham, Solicitor of the Supreme Court. 1953. London: Cambridge University Press. £1 5s. net.

Professor Street is somewhat of a rarity in that he is a solicitor among the academicians. Already in a joint work with Mr. J. A. G. Griffith we had read a chapter of his on Suits against the Administration. Now, after research undertaken in the United States, he treats the subject of the civil liability of governments comparatively, bringing under review the relevant laws in England, the remainder of the Commonwealth, the United States and some European countries.

If he can swallow the ungainly title, the practising lawyer will find much to interest him in this book. The topic of Crown privilege in regard to discovery of documents has recently been prominently before the profession here. *Ellis* v. *Home Office* is too recent a case for comment by Professor Street, but what he does give is a synopsis of the corresponding American rules; and many similar fascinating points of comparison could be instanced from other parts of the work.

The typesetting is distinctive and the format pleasing, as befits a work which is more for continuous study than for reference. By the same token an index is not essential, which is as well, for the one provided is perfunctory. It would be helpful, we think, to split up the table of contents to provide guide-posts to the reader. At the moment we can think of no other method of retracing an interesting passage on public agency, for instance, than by thumbing over dozens of pages.

**Marsden on the Law of Collisions at Sea.** Tenth Edition. By KENNETH C. MCGUFFIE, B.L., of Gray's Inn, Barrister-at-Law, Advocate of the Scottish Bar. 1953. London: Stevens & Sons, Ltd. £5 10s. net.

This leading work on a highly specialised topic of maritime law has been thoroughly modernised and brought up to date. The amount of work involved in this task must have been very considerable and those practising in the Admiralty Court should be grateful to the editor for the patience and discretion which he has displayed when reshaping this work. The *ipsissima dicta* of Marsden, in particular when judicially approved, are generally retained, but a good deal of desirable and necessary rearrangement has been carried out. The book is now divided into four parts: General Principles; the Regulations for Preventing Collisions at Sea; Local Rules of Navigation; Miscellaneous. The practising solicitor will find most topics in which he is interested gathered in the first part; in particular, the following sections should be useful: those on Liability, Damages, Shipowner's Liability as Carrier and Collisions with reference to Contracts of Insurance. Shipping circles will be equally pleased to have the modern "Marsden" as book of reference when questions of navigation and collision arise and they will, in particular, consult with benefit the complicated local rules relating to navigation and the modern statute law.

# THE MAN WHO KILLED A BARRISTER

"I WONDER if you could help me a moment with this one," said the Archangel Gabriel, filling his pipe and peering a little short-sightedly across his desk at the Junior Angel. "Nothing like a fresh mind. Tobacco?"

"Not for me, thank you," said Junior Angel. "Spoils the voice for singing. What's the case?"

"Just a matter of assessing the category," said the Archangel. "It's the case of a murderer. The man's been hanged and he's on his way up."

"I should say Category Z automatically," said the Junior Angel.

"Not necessarily," said the Archangel. "We have to judge by the intention and I have just got this chap's file from his Recording Angel. It happened on a stone staircase in a rather old-fashioned building, when my man hit the other one in a fit of temper, so that he fell backwards and was unfortunately killed. What made it worse was that the man he killed was a barrister."

"Pretty serious I should say," said the Junior Angel. "Aren't they regarded as rather a superior class?"

"Well, of course, there are different opinions on that subject," said the Archangel. "It's rather relevant to the whole story. My difficulty is that in assessing the gravity of this man's actions, I have to try and follow the rules of law in the country in which he lived. Not at all easy, I can tell you. The argument seems to be that this barrister had let the man down. He had accepted a brief for a case and then failed to turn up in court, sending a strange barrister to take his place. Now the Recording Angel tells me that a barrister is perfectly entitled to do that. Personally, I can't see it. I have tried to think the whole thing out the way they would look at it themselves. Apparently there's quite a routine in these matters. A solicitor goes to see a barrister's clerk. There is no doubt whatever that the solicitor is a duly authorised agent, entitled to make contracts within a limited and well defined sphere for his client. Equally there is no doubt that the barrister's clerk has full authority from the barrister to accept engagements as they are offered. The extent of his authority can be gauged from the fact that he even negotiates and settles fees. In the particular case I am dealing with, an unusually high fee had been exacted by the clerk because the litigant in question wanted that particular barrister and nobody else and made it perfectly clear before the brief was delivered. I suppose the arrangements made by these two agents could be revoked by their principals if they acted quickly enough, but in this case both the client and the barrister proceeded to act upon the bargain agreed between the two agents during the period of several months in which preparations were made for the hearing of the case. It seems to me that the barrister had ratified and adopted the bargain made by his agent up to the hilt. How then can it possibly be argued that the barrister is entitled to claim at the last moment that he was never subject to any contract? I cannot see," concluded the Archangel, "any earthly reason why these arrangements should not give rise to a straightforward contract for personal service. At least, I think that the barrister's failure to turn up constituted such substantial provocation that my man was well justified in giving him a poke in the chest when he met him on the stairs. A little high tempered, but that's all, and quite justifiably so. What would you say to Category B?"

Before the Junior Angel could reply the telephone rang and the Archangel listened gravely for a few minutes. He put the telephone down and began to tie up his papers.

"We needn't have worried," he said. "The chap's a solicitor. He's not coming here at all."

E. A. W.

# SURVEY OF THE WEEK

## STATUTORY INSTRUMENTS

**Ayr** County Council (Loch Bradan) Water Order, 1953. (S.I. 1953 No. 1448 (S. 108).)

**Blackrod** Water Order, 1953. (S.I. 1953 No. 1456.)

**British Transport** Commission (Pensions of Employees) Regulations, 1953 (S.I. 1953 No. 1445.) 8d.

**County Court** Districts (Redhill and Reigate) Orde., 1953. (S.I. 1953 No. 1459.)

**Dangerous Drugs Act, 1951** (Application) Order, 1953. (S.I. 1953 No. 1453.)

**Exchange of Securities** (No. 4) Rules, 1953. (S.I. 1953 No. 1472.) 5d.

**Herne Bay** Water Order, 1953. (S.I. 1953 No. 1460.) 5d.

**Iron and Steel** Foundries Regulations, 1953. (S.I. 1953 No. 1464.) 6d.

**Laundry** Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 1463.) 5d.

**London Traffic** (Children Crossing Traffic Notices) (Revocation) Regulations, 1953. (S.I. 1953 No. 1443.)

London Traffic (Prescribed Routes) (No. 27) Regulations, 1953. (S.I. 1953 No. 1466.)

**Merchant Shipping** (Certificates of Competency as A.B.) (Amendment) (No. 2) Regulations, 1953. (S.I. 1953 No. 1447.)

**North-West Wales** River Board (Change of Name) Order, 1953. (S.I. 1953 No. 1465.)

**Retail Furnishing and Allied Trades** Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 1442.) 11d.

**Retention of Cable and Mains under Highway** (Zetland) (No. 2) Order, 1953. (S.I. 1953 No. 1467.)

**Stopping up of Highways** (London) (No. 13) Order, 1953. (S.I. 1953 No. 1470.)

Stopping up of Highways (North Riding of Yorkshire) (No. 4) Order, 1953. (S.I. 1953 No. 1484.)

Stopping up of Highways (Oxfordshire) (No. 3) Order, 1953. (S.I. 1953 No. 1468.)

Stopping up of Highways (Staffordshire) (No. 4) Order, 1953. (S.I. 1953 No. 1469.)

**Telephone** Amendment (No. 3) Regulations, 1953. (S.I. 1953 No. 1458.) 5d.

**Traffic Signs** (School Crossing Patrols) Regulations, 1953. (S.I. 1953 No. 1444.) 5d.

**Transfer of Functions** (Export Credits Guarantee Department) Order, 1953. (S.I. 1953 No. 1452.)

**University of St. Andrews Act, 1953** (Commencement) (No. 1) Order, 1953. (S.I. 1953 No. 1451 (C. 5).)

**Wrexham and East Denbighshire** Water (No. 2) Order, 1953. (S.I. 1953 No. 1449.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

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The Chancellor of the Duchy of Lancaster has appointed Mr. GEORGE MADDOCKS to be a Judge of County Courts on Circuit No. 5 (Bolton, Bury, etc.) to fill the vacancy caused by the transfer to Circuit No. 4 of His Honour Judge Walmsley, Q.C.

The Lord Chancellor has decided to appoint Mr. GERWYN PASCAL THOMAS as Judge of Circuit No. 24 (Cardiff, etc.) with effect from 14th October, in succession to His Honour Judge L. C. Thomas, who retired on 13th October.

# POINTS IN PRACTICE

*Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.*

**Partnership**—Whether Articles of Partnership Need to be under Seal

*Q.* We have prepared a good many partnership deeds, and we have invariably prepared them for execution under seal; as a result there has always been a disbursement of 10s. deed duty. We have been asked why we do not prepare the documents under hand only, so that the disbursements would only be 6d. The books of precedents which we use confine themselves almost entirely to articles of partnership under seal, though one or two precedents of agreements under hand are given. Nowhere can we find any exposition of the advantages of a partnership deed over a partnership agreement, and we cannot think of any personally sufficient to warrant the extra 9s. 6d. May we please have your opinion.

*A.* We agree with the conclusion that, save in exceptional circumstances, there are no advantages from the legal point of view in having a partnership deed under seal in preference to an agreement for partnership under hand. The only circumstances where we consider that a deed would be necessary are (*a*) if there is included in the document an assurance of property which is, by law, required to be under seal, and (*b*) if the articles of partnership are intended to contain a power of attorney for the purposes of management (a common provision in the case of banking and mercantile partnerships) or in the event of winding up (see form on p. 893 of Prideaux's Forms and Precedents in Conveyancing, 24th ed.). In this last-mentioned connection, it must be remembered that the partner engaged as attorney in the winding up may need to execute a disclaimer or voluntary disposition of property in order to dispose of liabilities, and would therefore need to have power to execute a document under seal.

**Compulsory Purchase**—Declaratory Order—Whether Lessee Subsequently Taking New Lease is Entitled to Compensation

*Q.* In 1950, the Minister of Town and Country Planning made a declaratory order declaring a certain area to be subject to compulsory purchase for the purpose of dealing with war damage. Some months later my clients, who had been occupying business premises within the area of the order since some time before the order was made, took new leases of the property they occupied for seven years from Midsummer, 1950, with options to renew for another seven years, at a rent to be fixed by a valuer to be agreed or nominated by the Royal Institution of Chartered Surveyors. So far as I know no order for the compulsory purchase of the premises occupied by my clients has yet been made. It seems that if a man occupying business premises takes a new lease after notice to treat has been served, he will not be entitled to any compensation for disturbance (*Mercer* v. *Liverpool, etc., Railway* [1904] A.C. 461; there is also para. 8 of Pt. II of Sched. V to the Town and Country Planning Act, 1944, to bear in mind). Do you consider that a man who takes a new lease of his business premises after the making of a declaratory order but before a compulsory purchase order is made is unlikely to recover compensation for disturbance or whether this danger does not start until notice to treat has been served? The above-mentioned order of 1950 was made under s. 1 of the Town and Country Planning Act, 1944, which was preserved from repeal by the Act of 1947 under para. 16 of Sched. X to the 1947 Act. Paragraph 17 of the same Schedule says that in such a case Pt. IV of the Act of 1947 shall apply as if the land were comprised in an area defined by a development plan as an area of comprehensive development and designated as subject to compulsory acquisition by the local authority. Section 9 of the Town and Country Planning Act, 1947, says that if after twelve years from the date on which land is designated as subject to compulsory purchase it has not been taken the owner can serve on the local authority notice requiring either that his interest be taken within six months or that the designation be abandoned. In this case will the twelve years run from the date of the making of the order of 1950 or does the client have to wait for the twelve years to start running until the development plan for the County of London or this particular part of it is finally approved by the Ministry?

*A.* It is the service of the notice to treat which concludes the owner's power to deal with his property so as to increase the burden on the acquiring authority. A lease granted subsequent to such service cannot be compensated for: *Re Marylebone (Stingo Lane) Improvement Act; ex parte Edwards* (1871), L.R. 12 Eq. 389, and *Mercer's* case quoted in the enquiry. A new lease granted before this date will be the subject of compensation, except where it can be disregarded under para. 8 in Pt. III of Sched. II to the Acquisition of Land (Authorisation Procedure) Act, 1946. This is a similar provision to that contained in para. 8 in Pt. II of Sched. V to the Town and Country Planning Act, 1944, which has been repealed. We do not think that the renewal of a lease in the ordinary course of business between the date of the declaratory order and the date of the compulsory purchase order would be caught by para. 8. Such a transaction, in our opinion, is reasonably necessary, particularly where the term, as in this case, is comparatively short. It might, of course, be otherwise if the transaction were after the date of the compulsory purchase order. We doubt whether s. 9 of the Town and Country Planning Act, 1947, applies to the designation deemed to exist by para. 17 of Sched. X to that Act. Paragraph 17 only applies Pt. IV of the Act. Section 9 is in Pt. II. If s. 9 does apply to the deemed designation, we consider that the twelve years would run from the date of publication of the notice of the making of the declaratory order. If the land is in fact designated in the London Development Plan the twelve years in respect of such designation will run from the date on which the plan comes into operation. The section in the 1944 Act equivalent to s. 9 of the 1947 Act, namely, s. 2 (4), has been repealed, and s. 38 of the Interpretation Act, 1889, would not, in our opinion, keep it alive in respect of declaratory orders preserved under the transitional provisions of the 1947 Act.

**Bankruptcy**—House in Joint Names of Husband and Wife—Powers of Trustee in Bankruptcy of Husband

*Q.* Three years ago Mr. *X* with his own moneys purchased a freehold house in the names of himself and his wife. It is not known whether they hold as joint tenants or tenants in common. A mortgage was taken from a building society to enable the purchase to be made. Mr. *X* has never engaged in business but there is now a likelihood that he will be assessed to tax on certain capital deposits and on the capital employed in the purchase of the house unless the Inland Revenue accept his explanation as to the source of the capital. If these assessments are made, Mr. *X* may be forced into bankruptcy. In that event would his trustee in bankruptcy be in a position to compel the sale of the house and apply either the whole or one-half of the proceeds of sale to payment of Mr. *X's* debts? If the answer is "yes" in the case of a joint tenancy and "no" in the case of a tenancy in common, is it now too late for Mr. *X* to give notice to his wife severing the tenancy? Would the bankruptcy of Mr. *X* entitle the building society to call in the mortgage? If the house were now sold and Mrs. *X's* share of the proceeds of sale invested in the purchase of another house in her name only, would Mr. *X's* trustee in bankruptcy be able to lay any claim to the house?

*A.* In the event of Mr. *X* becoming bankrupt, his beneficial interest in the proceeds of sale will pass to the trustee in bankruptcy, and accordingly the trustee will then become either a joint tenant or a tenant in common with Mrs. *X*. As such, he would be in a position to compel the express or statutory trust for sale to be carried out and the house sold. In view, however, of the wife's special position in the home (see *Bendall* v. *McWhirter* (1952), 96 Sol. J. 344) it is very doubtful if the trustee in bankruptcy could force the wife to leave so as to enable the house to be sold with vacant possession. It is, therefore, very probable that the trustee will be willing to come to terms with the parties. In the event of sale, the interests in the proceeds would remain as before, and to enable the trustee to obtain control of the bankrupt's interest and make it available for creditors it would be necessary for the joint tenancy to be severed. It is accordingly immaterial whether the joint tenancy is severed now or later.

Whether the bankruptcy will enable the building society to call in the mortgage depends on the terms of that deed. If, however, a power of sale is conferred on the mortgagees in the event of bankruptcy, such power can only be exercised with the leave of the court: Law of Property Act, 1925, s. 110. If the house is sold at the present time and the proceeds expended on the purchase of another house in the name of the wife the

transaction could be set aside by the trustee in bankruptcy under s. 42 of the Bankruptcy Act, 1914. The purchase three years ago can itself be similarly set aside unless the wife can prove that Mr. *X* was at the time when he bought the house able to pay all his debts without recourse to the purchase money.

**Rent Restriction**—Possession—Sub-tenancy—Shared Living Accommodation—Doubt as to Whether Tenancy Determined by Surrender or Notice to Quit

*Q.* *A* is the owner of a freehold dwelling-house which was devised to her under her father's will subject to the tenancy of *B*. At some time *B* sub-let part of the dwelling to *C* and shared living accommodation therein with *C*. It is believed that this sub-letting took place after the death of *A's* father, but this is not certain. *B* recently gave *A* notice that she was quitting the house and then gave up possession, but *C* remained in occupation, and, when verbally requested by *A* to leave, refused to do so, but instead tendered rent. This rent was not accepted, but, despite a letter from *A's* solicitors asking him to leave, *C* still remains in occupation. *A* now proposes to commence proceedings against *C* in the county court for possession. Must *A* serve a notice to quit upon *C* or must this be done by *B*, who no longer has anything to do with the property? *B* has not heretofore served such a notice, but her solicitors did write to *C* asking him to leave, without giving a specific date. It is assumed that if *A* has to give a notice to quit it cannot be in the usual form.

*A.* The position depends, in our opinion, on what exactly happened when *B* "gave *A* notice that she was quitting the house and then gave up possession." If *B* terminated her tenancy by notice to quit, *C's* tenancy came to an end when the notice expired; as he shared vital living accommodation with *B*, the "principal Acts," i.e., the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, did and do not protect him so as to enable him to rely on s. 15 (3) of the 1920 Act, though his tenancy would be within the Furnished Houses (Rent Control) Act, 1946, by virtue of the Landlord and Tenant (Rent Control) Act, 1949, s. 7. But if *B* offered to and did surrender her tenancy, *C's* tenancy was not destroyed (*Parker* v. *Jones* [1910] 2 K.B. 32), and he now holds of *A*, who could not recover possession till that tenancy has been determined. If the information available is not sufficient to enable one to say with confidence how *B's* tenancy is determined, two documents could be sent to *C*, the one "without prejudice": a notice to quit, expiring at the proper date, but given without prejudice to the question whether the tenancy said to be determined in fact exists; and a demand of possession by such and such a date (a reasonable time) which could synchronise with the date of expiry of the notice to quit.

# NOTES AND NEWS

## Honours and Appointments

Mr. John Anthony Blackwood, solicitor, of Wigan, has been appointed city coroner of Liverpool. Mr. Blackwood has been deputy for four years and acting coroner since the retirement of Dr. George Cecil Mort.

Mr. Leonard Harold Sharpe, formerly clerk to Gravesend Bench, has been appointed clerk to Ipswich Magistrates in succession to Major Frank Stanley Ward, who is retiring to private practice after twenty-eight years' service.

Mr. Harold Swann, who is retiring from the position of town clerk at the end of the year, is to be granted the freedom of Heston and Isleworth borough.

## Personal Notes

An inscribed silver salver has been presented to Mr. Leslie Wearing Jackson, assistant solicitor to Blackpool Corporation, who is leaving to be solicitor to the White Fish Authority.

Messrs. Botterell and Roche, solicitors, of London, E.C.3, celebrated the golden jubilee of Mr. Harry Spreckley's service with the firm on 30th September.

After over fifty years' practice of the law in Reigate, Mr. James Edmund Hardy Vernon, solicitor, has retired, aged seventy-nine.

## Miscellaneous

### DEVELOPMENT PLANS

City of Bradford Development Plan

The above development plan was, on 1st October, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the county borough of Bradford. A certified copy of the plan as submitted for approval has been deposited for public inspection at the Town Hall, Bradford. The copy of the plan so deposited is available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 5 p.m. on Mondays to Fridays and between the hours of 10 a.m. and 12 p.m. on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 18th November, 1953, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the council of the county borough of Bradford and will then be entitled to receive notice of the eventual approval of the plan.

### NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Survey of Public Rights of Way

The following notices of the preparation of draft maps and statements under s. 27 of the above Act have appeared since the tables given at pp. 109, 175, 252, 303, 406, 512 and 641, *ante* :—

| Surveying Authority | Districts covered by draft map and statement | Date of notice | Last date for receipt of representations or objections |
|---|---|---|---|
| Cornwall County Council | Penzance and St. Ives Boroughs; St. Just Urban District and West Penwith Rural District | 19th September 1953 | 30th January, 1954 |
| Cumberland County Council | Penrith Urban District and Alston with Garrigill, Border, Penrith and Wigton Rural Districts | 9th September, 1953 | 31st January, 1954 |
| Derbyshire County Council | Alfreton, Belper, Matlock and Ripley Urban Districts; Wirksworth District and Belper Rural District | 1st October, 1953 | 13th February, 1954 |
| East Riding of Yorkshire County Council | Administrative County | 5th October, 1953 | 28th February, 1954 |
| Gloucestershire County Council | Dursley Rural District | 24th September, 1953 | 30th January, 1954 |
| Lincoln County Council—Parts of Kesteven | Grantham Borough and North Kesteven and West Kesteven Rural Districts | 4th September, 1953 | 16th January, 1954 |
| Lincoln County Council—Parts of Lindsey | Welton Rural District | 15th September, 1953 | 29th January, 1954 |
| Somerset County Council | Shepton Mallet Urban and Rural Districts | 6th October, 1953 | 6th April, 1954 |

In addition, a *definitive* map and statement, prepared under s. 32 of the Act, has been announced by Northamptonshire County Council, covering Brackley Borough.

Lancashire County Council announce that the period within which representations or objections may be lodged to the draft map and statement of Public Rights of Way in the Administrative County of Lancaster (see *ante*, p. 512) has been extended to 31st December, 1953.

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